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## Corporate Legislation

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## CORPORATE LEGISLATION

The state legislatures have been relatively inactive in the area of corporate legislation during the period from January, 1960 through June, 1960, even in those states generally regarded as the leaders in the field, i.e., Delaware, New Jersey, New York and Pennsylvania. However, there has been introduced in the New York Legislature a bill pending for an entirely new Business Corporation Law. This has been under study for four years by the Joint Legislative Committee to Study Revision of Corporation Laws.<sup>1</sup>

A major change has taken place in Alabama, where a completely new Business Corporation Act has been adopted.<sup>2</sup> Some of the more noteworthy provisions of the new act are: a corporate charter can now be amended without a meeting of either shareholders or directors, if the amendment is by unanimous consent, in writing, of the shareholders or directors;<sup>3</sup> directors can amend the by-laws unless prohibited by the corporate charter;<sup>4</sup> directors can be classified and their terms staggered;<sup>5</sup> directors can fill board vacancies, unless barred by the charter or by-laws;<sup>6</sup> a shareholders' meeting can be held outside the state if authorized by a shareholder-approved by-law;<sup>7</sup> absent fraud, the directors' judgment as to the value of consideration given for stock is conclusive;<sup>8</sup> and shareholder approval is not required for a sale of corporate assets, if such sale is in the regular course of business.<sup>9</sup>

The trend toward increasing liberality in the administration of corporate activity continues to be noticeable, many states now having legislation permitting corporations to secure directorate authorization for corporate acts without the necessity of board meetings. It should be noted, however, that each of such statutes requires all directors to consent in writing,<sup>10</sup> and many statutes impose additional requirements. Thus, in Indiana, informal directorate action is permissible only if expressly provided for in the articles of incorporation,<sup>11</sup> whereas in Ohio and Delaware it is permitted unless

<sup>1</sup> S. 3124.

<sup>2</sup> Alabama, Business Corporation Act, Act 414, Acts of 1959.

<sup>3</sup> *Id.* § 20.

<sup>4</sup> *Id.* § 59.

<sup>5</sup> *Id.* § 26.

<sup>6</sup> *Id.* § 28. Under the prior statute the directors could fill both if they constituted a quorum. See, Ala. Code tit. 10, § 24 (1940).

<sup>7</sup> *Id.* § 49. Under the prior statute this could be done only if a shareholder resolution was filed with the Secretary of State. See, Ala. Code tit. 10, § 70(7) (1940).

<sup>8</sup> *Id.* § 36. Under the prior statute the amount of capital stock with which the corporation could begin business had to be one-fourth of the authorized capital. See, Ala. Code tit. 10, § 2 (1940).

<sup>9</sup> *Id.* § 60. Under the prior statute approval was needed from two-thirds of the directors and eighty percent of the capital stock. See, Ala. Code tit. 10, § 91 (1940).

<sup>10</sup> See: Conn., Stock Corporation Act § 35(d) (not effective until January 1, 1961); Iowa, Business Corporation Act § 140, Iowa Code § 496A. 140 (Supp. 1959); Maryland, General Corporation Law § 58, Md. Ann. Code art. 23, § 58 (1957); Michigan, General Corporation Act § 450.13(c), Mich. Comp. Laws § 450.13(c) (1948); Minnesota, Corporation Act § 301.28[4(7)], Minn. Stat. § 301.28[4(7)] (1957); Pennsylvania, Business Corporation Law § 402(5).

<sup>11</sup> Indiana, General Corporation Act § 25-208, Ind. Ann. Stat. § 25-208 (Supp. 1960).

## CURRENT LEGISLATION

prohibited by the charter or certificate of incorporation.<sup>12</sup> It is allowed in North Carolina only if the shareholders have knowledge of it and make no objection.<sup>13</sup>

Another result of the trend toward informality of corporate action is that a growing number of states allow close corporations to dispense with shareholder meetings if there is no disagreement on the matters on which the stockholders' consent is to be secured. Generally, however, all shareholders must give their written consent to the action taken.<sup>14</sup>

States continue to make foreign corporations more amenable to *in personam* jurisdiction. Thus, in Maryland, a foreign corporation is subject to suit by a resident of, or by a person having a usual place of business in, Maryland, or on any cause of action arising out of a contract made or to be performed within the state, or out of liability incurred for acts done within the state, "whether or not such foreign corporation is doing or has done business in this state."<sup>15</sup>

A few states have passed legislation making the judgment of directors conclusive as to the adequacy of consideration given for stock options, in the absence of fraud.<sup>16</sup> In Arizona the rights of shareholders to inspect corporate records may not be limited by by-laws or articles of incorporation.<sup>17</sup> In New York a domestic corporation can now make charitable contributions to the United States, New York, or any of its political subdivisions, provided the contributions are for exclusively public purposes.<sup>18</sup>

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<sup>12</sup> Delaware, General Corporation Law § 141(g), Del. Code Ann. tit. 8, § 141(g) (Supp. 1958); Ohio, General Corporation Law § 1701.54, Ohio Rev. Code § 1701.54 (1958).

<sup>13</sup> North Carolina, Business Corporation Act § 55-29(a), N.C. Gen. Stat. § 55-29(a) (1960 Replacement).

<sup>14</sup> Alabama, Business Corporation Act, Act 414, Acts of 1959; Alaska, Business Corporation Act § 149; Iowa, Business Corporation Act § 140, Iowa Code Ann. § 496A. 140 (Supp. 1959); Pennsylvania, Business Corporation Law § 513; Ohio, General Corporation Law § 1701.54, Ohio Rev. Code § 1701.54 (1958); Delaware, General Corporation Law § 228, Del. Code Ann. tit. 8, § 228 (1953); California, General Corporation Law § 2239, Cal. Corp. Code § 2239 (1955); Conn. Stock Corporation Act § 49 (effective January 1, 1961); Maryland, General Corporation Law § 47, Md. Ann. Code art. 23, § 47 (1957).

<sup>15</sup> Maryland, General Corporation Law § 92(d), Md. Ann. Code art. 23, § 92(d) (1957). See also: Minnesota, Business Corporation Act § 303.13(3), Minn. Stat. § 303.13(3) (1957); North Carolina, Business Corporation Act § 55-145, N.C. Gen. Stat. § 55-145 (1960 Replacement).

<sup>16</sup> See: New York, Stock Corporation Law § 69 (Supp. 1960); Pennsylvania, Business Corporation Law § 612; Delaware, General Corporation Law § 157, Del. Code Ann. tit. 8, § 157 (Supp. 1958); Iowa, Business Corporation Act § 19, Iowa Code § 496A. 19 (Supp. 1959).

<sup>17</sup> Arizona, General Corporation Law § 10-175(b), Ariz. Rev. Stat. Ann. § 10-175 (Supp. April 1960).

<sup>18</sup> New York, General Corporation Law § 34(a) (Supp. 1960). The statute does provide that the right of contribution by the corporation can be limited by the certificate of incorporation.